

## REMARKS/ARGUMENTS

Reconsideration and allowance of the above-identified application are respectfully requested. Upon entry of this Amendment, claims 18-43 will be pending.

As an initial matter, the Examiner objected to claims 23, 25 and 42 because the phrase "digital picture" was meant to be deleted by the previous amendment, but was not marked correctly. Claims 23, 25 and 42 have been corrected by the present amendment. Accordingly, the objection is deemed to be overcome.

The Examiner has rejected claims 18-19 and 35-43 under 35 U.S.C. §101 as being directed to non-statutory subject matter. At the outset, Applicants are surprised to receive a rejection under 35 U.S.C. §101 in the fifth office action since the application was filed on December 21, 2001. If the claims, which have been amended but which have existed in substantially the same form since filing, lacked a "concrete, tangible, useful" result, the Examiner should have made the rejection long ago. Having reviewed the Examiner's reasons for rejecting claims 18-19 and 35-43 under 35 U.S.C. §101, Applicants traverse the rejection. As to independent claim 18, *each recited step* produces a concrete, tangible, useful result. In the first step, a plurality of voted ballots are *marked with a unique ballot identification*. In the second step, the ballots are scanned and visual representations of the ballots are generated. In the third step, markings made by the voter on the ballots are analyzed and vote data associated with each ballot is generated. Finally, in the last step, the visual representation of the ballot and the corresponding vote data is *associated with the voted ballot based on the unique ballot identification* marked in the first step. As a

result, the three components (voted ballot, visual representation of ballot, and vote data corresponding to analyzed ballot) are all associated, and ready for auditing. Accordingly, the claim does describe a method of auditing. Furthermore, the claim produces a concrete, tangible, useful result. That is, the method produces three separate components all associated with a unique ballot identification which facilitates proper auditing of ballots. The Examiner suggests that the explicit step of storing the visual representation and the vote data *in a database* would overcome the rejection, since claim 20 is not rejected under 35 U.S.C. §101. However, such a step is not required to make the claim produce a concrete, tangible and useful result. As argued above, the claim already produces such a result *in each recited step*. Claim 19 depends from claim 18 and inherits the same concrete, tangible and useful result as claim 18. Reconsideration and withdrawal of the rejection is requested.

Turning to claim 35, the Examiner suggests that the claimed computer readable medium comprises “wireless telecommunication signals and carrier waves, forms of energy.” Further, the Examiner presumably considers a “computer readable *storage* medium” to overcome such a deficiency. The rejection is traversed. There is simply no requirement to claim a computer readable *storage* medium. In fact, the very MPEP section that the Examiner cited (MPEP 2106(IV)(b)(1)) states that “[w]hen functional descriptive material is recorded on some *computer readable medium* it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.” Accordingly, applicants respectfully request withdrawal of the rejection.

Claims 36-43 depend from claim 35, and accordingly the rejection should be withdrawn for at least the same reason.

Turning to the substantive rejections, the Examiner has again rejected claims 18-43 as being obvious in view of U.S. Patent No. 6,250,548 to McClure. Applicants have painstakingly described the deficiencies of the McClure reference over four written responses to office actions and a personal interview conducted on December 13, 2005. Applicants will address the Examiner's position as laid out in the October 19, 2006 office action, and respectfully ask the Examiner to reconsider and remove the rejection or finalize the rejection so that Applicants can appeal to the Board of Patent Appeals and Interferences, since it appears that Applicants and the Examiner are unable to come to a common understanding despite every effort over the past five years.

The Examiner has applied impermissible hindsight to attempt to find the elements of claims 18-43 in the McClure patent. Applicants have previously addressed the deficiencies in the Examiner's position, but will summarize the same again for clarity. In the office action, the Examiner repeatedly refers to disparate sections of McClure which are relatively unrelated, namely, Column 32, lines 53-57, and Column 37, lines 22-38. McClure discussed several modes of voting. First, McClure discusses voting at a kiosk in a polling location. Next, McClure discusses absentee voting procedures. Finally, McClure discusses internet voting. The Examiner takes bits and pieces of these three types of voting described in McClure and using hindsight, attempts to find elements of applicants' claims. This is not permissible, and would not be possible. The test is whether one of ordinary skill at the time the invention was made would read McClure and be able to

make applicants' claimed invention without undue experimentation. This simply would not be possible.

Applicants' invention is directed to a method of auditing an election where *voted paper ballots* are marked with an identifier, scanned and analyzed to determine what votes were made on the ballot. Vote data is then generated based on the analyzed ballot, and the three elements are associated with one another to improve human reviewability of the voted ballots. The three elements are the voted paper ballot, the scanned electronic version of the ballot, and the vote data generated based on the analysis of the ballot. Because of this, a computer can detect errors on a particular ballot, and bring the error to the attention of a human.

As an example, a particular voter may have voted for two candidates where they were supposed to vote for only one. This error can be detected when the ballot is analyzed. The vote data could then be corrected by a human reviewer if, say, it appears that the voter crossed out their initial vote and voted for the second candidate. Furthermore, if the intention of the voter in the electronic image of the voted ballot is inconclusive, the original paper ballot can be retrieved because its unique identifier is associated with the ballot image that was identified as erroneous. Thus, the human reviewer could pinpoint the exact paper ballot and physically look at it to try and discern the voter's intent where a voting error was detected by analysis of the electronic image of the ballot. This ability is unique to embodiments of the present invention, and simply not possible given the disclosure of McClure.

The Examiner erroneously looks to the absentee voting process described in McClure, and in particular the brief mention of handwriting recognition which may occur

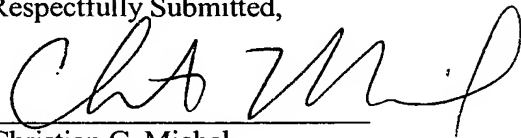
where an absentee voter provided a “write-in” vote. The Examiner then combines this with internet voting described later in McClure for a ballot image that is “downloaded, displayed, written-in/changed, cast and stored.” The Examiner fails to recognize that nowhere in McClure is auditing of voted ballots as described above and claimed, taught or suggested in McClure. On the contrary, McClure’s teaching would render the type of auditing described above *impossible*. McClure’s system is meant to *prevent humans from knowing what votes were cast on a particular ballot*. This point cannot be overstated, and is why the McClure reference is poorly selected as a 103 reference by the Examiner. Embodiments of the present invention, as claimed, *enable* a human reviewer to correct vote data to more accurately reflect voters’ intent based on a review of voted ballots. McClure, by contrast, specifically renders such ability impossible by randomizing the location of ballot positions, and separating the voted markings from the associated candidates. In McClure, a computer is *required* to know what votes were made on a particular ballot, and the computer has the last word *by design*. In embodiments of the present invention, by contrast, a human being can advantageously correct what a computer otherwise got wrong.

At the December 13, 2005 interview, the Examiner appeared to appreciate the above distinctions, and agreed to withdraw the rejections based on McClure and to perform an update search for new prior art. Unfortunately, that understanding must have faded since, and the Examiner repeated the same erroneous rejections with the same faulty logic and impermissible hindsight in the current office action. Applicants ask the Examiner to kindly reconsider, and to allow the claims, or to at least find and cite appropriate prior art.

Application Serial No. 10/023,990  
Amdt. dated January 19, 2007  
Resp. to office action mailed October 19, 2006

In view of the above, it is believed that the application is in condition for allowance and notice to this effect is respectfully requested. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Respectfully Submitted,

  
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